

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JOSE FRANCISCO BARRERA,
Petitioner,
VS.
NATHANIEL QUARTERMAN, Director,
T.D.C.J., Correctional
Institutions Division,
Respondent.

§
§ CIVIL ACTION NO. 4:06-CV-231-Y
§
§

ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS AND CONCLUSIONS

In this action brought by petitioner Jose Francisco Barrera under 28 U.S.C. § 2254, the Court has made an independent review of the following matters in the above-styled and numbered cause:

1. The pleadings and record;
2. The proposed findings, conclusions, and recommendation of the United States magistrate judge filed on October 10, 2006; and
3. The petitioner's written objections to the proposed findings, conclusions, and recommendation of the United States magistrate judge filed on October 27, 2006.

The Court, after de novo review, concludes that the Petitioner's objections must be overruled, and that the magistrate judge's findings and conclusions should be adopted, such that Barrera's ground one, that the trial court erred in denying a motion for continuance, will be dismissed with prejudice as barred by procedural default; but that ground two, the trial court erred in overruling his objection to hearsay testimony, and ground three, the trial court erred in failing to instruct a verdict due to insufficient evidence, will be dismissed without prejudice for lack of exhaustion.

Therefore, the findings, conclusions, and recommendation of the magistrate judge are ADOPTED.

Petitioner Barrera's grounds for relief number one is DISMISSED WITH PREJUDICE.

Petitioner Barrera's grounds for relief two and three are DISMISSED WITHOUT PREJUDICE, except as to any application of the federal statute of limitations or other federal procedural bar that may apply.¹

SIGNED October 31, 2006.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

¹A one-year statute of limitations is now applicable to the filing of non-capital § 2254 habeas corpus petitions in federal court. See 28 U.S.C.A. § 2244(d)(1-4)(West Supp. 2006). The statute of limitations is tolled, however, while a properly filed application for state post-conviction or other collateral review is pending. 28 U.S.C.A. § 2244(d)(2)(West Supp. 2006).